

<p style="text-align: right;">Page 25</p> <p>1 Q The next document here is a copy of Plaintiff's</p> <p>2 Opposition to Defendant's Motion for Summary</p> <p>3 Judgment, two-page document.</p> <p>4 A Yes.</p> <p>5 Q Next document is Plaintiff's Memorandum in Support</p> <p>6 of Plaintiff's Opposition blah, blah, blah, blah,</p> <p>7 blah, seven-page document?</p> <p>8 A Yes.</p> <p>9 MR. REGAN: I think the blah, blah, blah</p> <p>10 is somewhat important. It's Plaintiff's Crossmotion</p> <p>11 for Summary Judgement.</p> <p>12 Q I'll be more clear. Plaintiff's Memorandum in</p> <p>13 Support of Plaintiff's Opposition to Defendant's</p> <p>14 Motion For Summary Judgment and Crossmotion for</p> <p>15 Partial Summary Judgment.</p> <p>16 Next we have the deposition of Jose</p> <p>17 Abreu, A B R E U?</p> <p>18 A Yes.</p> <p>19 Q And it starts on page one and ends on page 24. It</p> <p>20 appears to be the entire transcript.</p> <p>21 A Yes.</p> <p>22 Q Next document would be the deposition of Joao Cura</p> <p>23 starting on page one and ending on page 42, again</p> <p>24 appears to be the entire transcript.</p>	<p style="text-align: right;">Page 27</p> <p>1 A Yes.</p> <p>2 Q Was this given to you, or was this something that</p> <p>3 you had?</p> <p>4 A No, it was given to me.</p> <p>5 Q Do you know who gave it to you?</p> <p>6 A Yes.</p> <p>7 Q Who was it?</p> <p>8 A Attorney Regan.</p> <p>9 Q The next document we have is an affidavit of David</p> <p>10 DuBois. This is an affidavit which is dated 22nd of</p> <p>11 February 2006?</p> <p>12 A Yes.</p> <p>13 Q That has 14 items, paragraphs in it?</p> <p>14 A Yes.</p> <p>15 Q Signed by yourself?</p> <p>16 A Yes.</p> <p>17 Q The next document?</p> <p>18 MR. REGAN: Same thing, just a photocopy.</p> <p>19 Q The one I just referred to appears to be the</p> <p>20 original, correct?</p> <p>21 A I'm not sure if it's an original or a good copy of</p> <p>22 the original. I would say that based on the way</p> <p>23 this signature reads, this is a photocopy of the</p> <p>24 original, and the original would have been mailed to</p>
<p style="text-align: right;">Page 26</p> <p>1 A Yes.</p> <p>2 Q And the next is the deposition of Carlos Aguiar</p> <p>3 starting on page one and ending on page 110, and</p> <p>4 appears to be the entire transcript. For the record</p> <p>5 I did say 110 but actually it's 111 but appears to</p> <p>6 be the entire transcript.</p> <p>7 The next document we have is a letter on</p> <p>8 your Marine Safety Consultants' letterhead dated</p> <p>9 September 29, 2006. Says "Dear Mr. Regan, Attached</p> <p>10 find my original affidavit that I have faxed to you</p> <p>11 earlier today. Should you have any questions or</p> <p>12 assistance, please don't hesitate to call," signed</p> <p>13 by yourself. Correct?</p> <p>14 A Yes.</p> <p>15 Q Attached to that is a two-page affidavit with 11</p> <p>16 line items.</p> <p>17 A Yes.</p> <p>18 Q That is signed the 28th of September?</p> <p>19 A Yes.</p> <p>20 Q Next is a case entitled Lisa and Tina Vs. Fournier</p> <p>21 Marine Corporation. Do you see that?</p> <p>22 MR. REGAN: Not Lisa and Tina, Richard</p> <p>23 Lisa and Tina Lisa.</p> <p>24 Q Vs. Fournier Marine Corporation.</p>	<p style="text-align: right;">Page 28</p> <p>1 Mr. Regan with that FedEx receipt that you referred</p> <p>2 to in the beginning of the file. So the original is</p> <p>3 FedExed to Mr. Regan.</p> <p>4 Q Affidavit from David C. DuBois, do you see that?</p> <p>5 A Yes.</p> <p>6 Q Appears to be a fax at the top?</p> <p>7 A Yes.</p> <p>8 Q Where did that fax come from?</p> <p>9 A Mr. Regan's office.</p> <p>10 Q After they faxed to you, correct?</p> <p>11 A They -- I drafted it, they typed it in a format for</p> <p>12 the court and faxed it to me for signature, and I</p> <p>13 signed it and mailed in the original.</p> <p>14 Q How did you draft it?</p> <p>15 A My secretary would have typed it.</p> <p>16 Q You wrote the words and then gave, somehow gave the</p> <p>17 words to Mr. Regan's office?</p> <p>18 A Yes, and they put it in the format necessary for an</p> <p>19 affidavit.</p> <p>20 Q When you drafted it, do you have a memory of</p> <p>21 drafting it?</p> <p>22 A Yes.</p> <p>23 Q When you say "draft," you could mean handwrite on a</p> <p>24 pad of paper, you could mean talking to a</p>

7 (Pages 25 to 28)



<p style="text-align: right;">Page 29</p> <p>1 Dictaphone, you could mean talking to your secretary</p> <p>2 while you are on the phone and she is at the office.</p> <p>3 It could mean a lot of things. What is your memory</p> <p>4 as to how this affidavit was drafted?</p> <p>5 A I think I handwrote a summary of my findings and my</p> <p>6 opinions and sent it to Mr. Regan, and then his</p> <p>7 office put it in the form of an affidavit and sent</p> <p>8 it back to me for review to make sure that is what I</p> <p>9 said, and then I signed it and sent it back to him.</p> <p>10 MR. ANDERSON: Why don't we mark this.</p> <p>11 I'm going to pull this out of this and we're going</p> <p>12 to mark this as Exhibit No. 2.</p> <p>13 Q Exhibit No. 2 is a one, two, three, four, five,</p> <p>14 Exhibit 2 is a five-page document, is that correct?</p> <p>15 A Yes.</p> <p>16 [Exhibit 2 marked for identification]</p> <p>17 Q And that was faxed to Marine Safety Consultants by</p> <p>18 Regan &amp; Kiely at some point this winter, is that</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q And it says 2-12 of 2006. Does that sound about</p> <p>22 right?</p> <p>23 A 2-21.</p> <p>24 Q I'm reading upside down.</p>	<p style="text-align: right;">Page 31</p> <p>1 A I don't remember whether it was a court-ordered</p> <p>2 deadline or a deadline that Mr. Regan placed on me.</p> <p>3 I just know that we were working on it and I sent it</p> <p>4 and signed it, and that's the date I sent it.</p> <p>5 Whether there was a deadline, I don't remember.</p> <p>6 Q At some point after you signed Exhibit 2, did you</p> <p>7 receive a hard copy in the mail as opposed to a</p> <p>8 faxed copy?</p> <p>9 A I don't think so.</p> <p>10 MR. ANDERSON: Why don't we mark the next</p> <p>11 document as Exhibit No. 3.</p> <p>12 [Exhibit 3 marked for identification]</p> <p>13 Q Exhibit 3 is a four-page document also entitled</p> <p>14 Affidavit of David DuBois?</p> <p>15 A Yes.</p> <p>16 Q That appears not to be a fax. Does that appear to</p> <p>17 you?</p> <p>18 A This is a photocopy of the original document that I</p> <p>19 mailed -- FedExed, I'm sorry. FedExed on the date.</p> <p>20 It's a photocopy of an original.</p> <p>21 Q So on 2-21 of '06 you FedExed a package to Julie</p> <p>22 Easter. She is an attorney at Regan &amp; Kiely,</p> <p>23 correct?</p> <p>24 A I don't know if she is an attorney or paralegal.</p>
<p style="text-align: right;">Page 30</p> <p>1 A Yes.</p> <p>2 Q Does that sound about right?</p> <p>3 A Yes.</p> <p>4 Q The text in Exhibit 2 was provided to Regan &amp; Kiely,</p> <p>5 typed up in affidavit form, provided by you,</p> <p>6 correct?</p> <p>7 A The contents of the affidavit to the extent that</p> <p>8 it's my work product other than in the format and</p> <p>9 the ending pains and perjury paragraph would have</p> <p>10 been my comments provided to Mr. Regan, and they</p> <p>11 drafted it as I said in the appropriate format and</p> <p>12 sent it back to me.</p> <p>13 Q Exhibit 2 on the last page of Exhibit 2, that</p> <p>14 signature was written after the fax was received?</p> <p>15 A Yes.</p> <p>16 Q So that's pen. The rest of Exhibit 2 came out of</p> <p>17 the fax machine basically?</p> <p>18 A That's what it looks like.</p> <p>19 Q Is that consistent with your memory?</p> <p>20 A Yes, to the extent that that is how I recall this</p> <p>21 transpire, yes.</p> <p>22 Q At some point -- And there was a concern over</p> <p>23 getting it done within a certain court-ordered</p> <p>24 deadline, do you recall that in February?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q Somebody from Regan &amp; Kiely?</p> <p>2 A Yes.</p> <p>3 Q And you believe what was FedExed to them on 2-21 of</p> <p>4 '06 was an original affidavit of David C. DuBois</p> <p>5 which was on plain paper, not run through a fax</p> <p>6 machine, and signed by yourself of which Exhibit 3</p> <p>7 is a copy?</p> <p>8 A I think, I'm not sure because this FedEx receipt is</p> <p>9 not affixed to that. But my recollection of that</p> <p>10 period of time was I FedExed back an original</p> <p>11 document. Whether it's an original of this one here</p> <p>12 with the fax cover sheet, not the fax cover sheet</p> <p>13 but the fax notations, I'm not sure. I don't</p> <p>14 recall. I'd have to look and see which one we</p> <p>15 received to be able to say that. I don't know.</p> <p>16 Q I'm going to keep going through the file and set</p> <p>17 these two aside for the moment. That's the end of</p> <p>18 section of the file labeled "correspondence"?</p> <p>19 A That doesn't mean anything, it's just an old file</p> <p>20 folder that got re-used.</p> <p>21 Q The next document in here is another document that</p> <p>22 says Affidavit of David DuBois.</p> <p>23 A Yes.</p> <p>24 Q Is this a copy or original, if you know?</p>

8 (Pages 29 to 32)

<p style="text-align: right;">Page 33</p> <p>1 A That appears to be a photocopy of this one here that</p> <p>2 you marked as Exhibit 2. I'm sorry, it's a</p> <p>3 photocopy of the one that you marked as Exhibit 3, I</p> <p>4 believe. Maybe I got mix-and-match papers, I don't</p> <p>5 know.</p> <p>6 Q Exhibit 2 has got an original signature on it,</p> <p>7 correct?</p> <p>8 A Yes, but there is no date.</p> <p>9 Q Exhibit 3 appears to have a photocopied signature,</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q The same is true with the document in your hand,</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q Do you know how, why this document that we'll mark</p> <p>16 as Exhibit 4, do you know why that is in the file?</p> <p>17 A Other than it's a photocopy of one that I was using</p> <p>18 just as a work document, there would be no other</p> <p>19 reasons. Sometimes multiple copies get made and</p> <p>20 marked up. Sometimes there is a reason for it,</p> <p>21 sometimes there is not. I don't recall why I got a</p> <p>22 copy of that.</p> <p>23 [Exhibit 4 marked for identification]</p> <p>24 Q On Exhibit 4 there is highlighted in yellow on</p>	<p style="text-align: right;">Page 35</p> <p>1 may have been translated wrong, so I made a pen and</p> <p>2 ink change.</p> <p>3 Q Next document is a transcribed statement of Carlos</p> <p>4 Aguiar.</p> <p>5 A Yes.</p> <p>6 Q It's one, two, three, four, five, six.</p> <p>7 A Yes.</p> <p>8 Q How did you get this transcribed statement of Carlos</p> <p>9 Aguiar?</p> <p>10 A How did I get it?</p> <p>11 Q Yes.</p> <p>12 A I don't recall how I got this particular document.</p> <p>13 I don't recall if it was photocopied by my</p> <p>14 secretary. I don't recall if it was mailed to me.</p> <p>15 I know it's something that I reviewed back in</p> <p>16 February in preparation for the, when I prepared my</p> <p>17 affidavit.</p> <p>18 Q Do you have any memory of pulling it out of the</p> <p>19 investigative file?</p> <p>20 A No, I don't.</p> <p>21 Q Next document in your file is a document entitled</p> <p>22 Affidavit of Carlos Aguiar.</p> <p>23 A Yes.</p> <p>24 Q It's a one-, two-, three-, four-, five-, six-page</p>
<p style="text-align: right;">Page 34</p> <p>1 paragraph 5 there is yellow highlight. Do you know</p> <p>2 who wrote that?</p> <p>3 A Who put those yellow highlights?</p> <p>4 Q Yes.</p> <p>5 A I did.</p> <p>6 Q Do you know when you did that?</p> <p>7 A Last night.</p> <p>8 Q Do you know why you did that?</p> <p>9 A Yes, in order to prepare somewhat for today, I was</p> <p>10 reviewing my affidavit and reviewing the information</p> <p>11 that, other documents that I had in my file to make</p> <p>12 sure I had everything and hadn't misplaced anything.</p> <p>13 Q On the third page of the affidavit in paragraph 9,</p> <p>14 first line, is that writing that is there, is that,</p> <p>15 it was written last night, or is that a copy of</p> <p>16 something, notes?</p> <p>17 A I think it's a copy of a pen and ink change to the</p> <p>18 affidavit based on a typographical error, and that's</p> <p>19 my handwriting.</p> <p>20 Q It says "whale carcass." Do you know who originally</p> <p>21 put that in the affidavit?</p> <p>22 A May have been my secretary or in my notes, I don't</p> <p>23 recall. I just know when I reread it, I said that</p> <p>24 is not what I said or not what I meant to say and it</p>	<p style="text-align: right;">Page 36</p> <p>1 document?</p> <p>2 A Yes.</p> <p>3 Q And there is yellow highlight on it in various</p> <p>4 places?</p> <p>5 A Yes.</p> <p>6 Q Do you know when that yellow highlight was applied?</p> <p>7 A Yes.</p> <p>8 Q When?</p> <p>9 A February.</p> <p>10 Q It appears it was faxed to you from the top?</p> <p>11 A Yes.</p> <p>12 Q The date in which it indicates it was faxed was</p> <p>13 February 14 of 2006?</p> <p>14 A Yes.</p> <p>15 Q Do you know who faxed it to you?</p> <p>16 A Again this looks like Mr. Regan's office fax number.</p> <p>17 Q Next document in this pile is Plaintiff's Statements</p> <p>18 of Undisputed Material Facts blah, blah, blah, blah,</p> <p>19 blah. It's a one-, two-, three-, four-, five-, six-</p> <p>20 seven-, eight-page document?</p> <p>21 A Yes.</p> <p>22 Q And again that appears to be a document which was</p> <p>23 faxed to your office?</p> <p>24 A Yes.</p>

9 (Pages 33 to 36)